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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.19 OF 2007

Kali Burjorji Mehta, since deceased through LRs and others — Petitioners

versus

Dhanu Bulchand Vaswani & ors. — Respondents

Mr.R.S.Apte for Ashutosh Gole for petitioners.
Mr.R.H.Mirja for respondents 1 to 3.

CORAM : A.S.OKA, J.

DATE : 27th April 2007

PC :

1. Heard learned counsel for the parties. The first respondent is the original plaintiff and petitioners are some of the defendants.

2. First respondent filed a suit for permanent injunction restraining first to fourth defendants from in any manner using the suit land and from obstructing the alleged possession of the first respondent over the suit land. A mandatory injunction was also sought for demolition of the bungalow/building constructed on the suit land

with a direction to the first to fourth defendants to hand over vacant possession of the land described in the schedule to the plaint to first respondent and fifth and sixth defendants. After the parties led evidence, an application was made at Exhibit-190 by the petitioners praying that the issue of valuation of the suit for the purposes of court fee and jurisdiction be tried as a preliminary issue. By the impugned order dated 22nd August 2006, the learned Judge rejected the application. However, while rejecting the application, the learned Judge purported to decide the issue of valuation of the suit on merits.

3. After having heard the submissions of the advocates for the parties I find that the learned Trial Judge has committed an error by finally deciding the issue of valuation while deciding an application made by the petitioners praying for treating the issue of valuation as a preliminary issue. In fact, when the evidence was led by both the parties on all the issues, there was no occasion for the learned Trial Judge to decide the issue of valuation as a preliminary issue. In fact, all the issues ought to have been decided together as held by a Division Bench of

this Court (Coram : Mhase and Sathe, JJ.) in the case of Jagdish Hari Thatte and another V/s. Municipal Corporation and another (Appeal from Order No.1107 of 2001 decided on 15th December 2006). Moreover, while deciding the application praying for treating the issue of valuation as a preliminary issue, the learned Judge has decided the issue itself. Only on this ground the impugned order deserves to be quashed and set aside. The learned Judge will consider and decide the issue as regards valuation and court fee along with other issues framed in the suit. Hence, I pass following order.

4. ORDER :-

(a) The impugned judgment and order dated 22nd August 2006 is quashed and set aside. It is made clear that the issue of valuation of the suit for jurisdiction and court fee is expressly kept open and the same shall be decided by the learned Trial Judge along with other issues framed in the suit;

(b) It is made clear that the impugned order is set aside only on the grounds which are indicated in the judgment and not on the merits of the case

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made out by the parties as regards valuation of the suit;

(c) Civil Revision Application is partly allowed in above terms with no orders as to costs;

(d) The Trial Court is directed to decide the suit as expeditiously as possible and in any event on or before 3rd August 2007.

(A.S.OKA, J.)